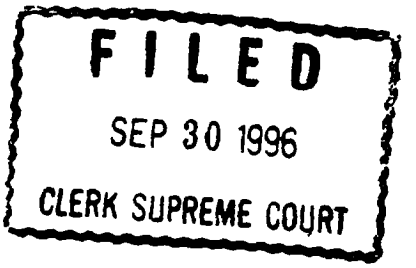
IN THE COURT OF APPEALS OF IOWA

No. 6-434/ 95-548



STATE OF IOWA,
Appellee,

vs.

RUBEN GARZA,
Appellant.

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

Ruben Garza appeals his convictions, following a jury trial, of first-degree murder and first-degree kidnapping. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Denver D. Dillard, County Attorney, and Todd D. Tripp, Assistant County Attorney, for appellee.

Heard by Habhab, P.J., and Cady and Vogel, JJ.

VOGEL, J.

The State charged Ruben Garza with first-degree murder, first-degree kidnapping and two counts of third-degree sexual abuse. The charges arose from Garza's alleged murder of Sue Ellen Vega, whose body had twenty-one stab or cut wounds when she was found, and his alleged kidnapping and sexual abuse of Vega's daughter, C.H.

Vega was last seen on the night of May 22, 1993. Also during the night of May 22, C.H. reported she had been sexually abused by Garza twice at the roller dam area in Cedar Rapids. At trial, C.H. testified Vega and Garza went out in the evening on May 22 to buy cigarettes. When Garza returned, Vega was not with him. Garza told C.H. to get in the car with him so they could visit a family friend. Instead, Garza took C.H. to the roller dam area where he sexually abused her twice. After committing the acts, Garza took C.H. back to the apartment he shared with Vega and C.H. so C.H. could shower. He then had anal intercourse with C.H. Garza then drove C.H. to a family member's house in Center Point where he dropped her off. Vega's body was discovered in the roller dam area on May 27, 1993.

Following trial, the jury found Garza guilty on all four counts. The jury indicated by special interrogatory Garza confined C.H. for a time which included the two acts of sexual abuse. The court therefore entered judgment solely upon the murder and kidnapping charges. The court sentenced Garza to two consecutive life sentences.

Garza appeals.

I. ***Sufficiency of the Evidence.*** Garza contends there was insufficient evidence to support the convictions for murder and kidnapping. The scope of review is for correction of errors of law. Iowa R. App. P. 4.

We examine the record to determine if substantial evidence, together with all reasonable inferences arising from the evidence, support's the jury's verdict. *State v. Terry*, 544 N.W.2d 449, 451 (Iowa 1996). The verdict binds this court if it is supported by substantial evidence. *Id.* Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992); *State v. Walker*, 538 N.W.2d 316, 319 (Iowa App. 1995). We consider all evidence presented at trial, not just the evidence supporting the verdict. *State v. Constable*, 505 N.W.2d 473, 478 (Iowa 1993).

A. ***Murder.*** We must first examine the evidence concerning the murder conviction. The State does not have the affirmative duty to present evidence which excludes every conceivable theory or hypothesis which conflicts with guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 326, 99 S. Ct. 2781, ----, 61 L. Ed. 2d 560, 578 (1979). Direct and circumstantial evidence are equally probative,

as long as the evidence raises a fair inference of guilt and does more than create speculation or suspicion. *State v. Uthe*, 542 N.W.2d 810, 815 (Iowa 1996); *State v. Dible*, 538 N.W.2d 267, 270 (Iowa 1995). The jury is free to reject certain evidence and credit other evidence. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994).

C.H. testified that on the afternoon of May 22, 1993, while her mother was working, she and Garza went fishing at the roller dam area. C.H. had never gone fishing with Garza before. Since this was the same area where the sexual abuse took place and where Vega's body was found, the jury could have reasonably concluded Garza was scouting for a place to commit the crimes.

Testimony was given by a friend of Garza's, Kathy Evens, that in the afternoon of May 22, Garza offered to sell her his dog for $30. Evens found this unusual since Garza had stated previously he would not sell the dog for less than $75. The jury could reasonably conclude Garza needed the money, in view of what he planned to do with Vega and C.H. and in view of the fact Vega later fled the state. Evens also testified Garza told her he intended to "get even with" Vega, explaining she had left him.

Carlos Isaac testified Garza had expressed anger against Vega sometime in May 1993 because she had called his parole officer and told him Garza had been violating his parole by using drugs. Garza told Isaac he was going to "kill the bitch." Garza also told Isaac in May 1993 that he had checked out the roller dam area and he was "going to dump" Vega there.

C.H. testified Garza would not let her accompany him and Vega on the evening of May 22 to the store where Garza and Vega were going to buy cigarettes. That was the last time C.H. saw her mother, as when Garza returned, Vega was not with him. The last person to see Vega alive was the clerk at the convenience store who testified she saw Vega get out of the passenger side of Garza's car.

Two of the tires on Garza's car were consistent with, and could have left, a tire impression found at the scene where the body was found. Human blood was found on three areas of the passenger door of Garza's car. The blood was consistent with the blood type of Vega, and Garza was eliminated as a possible donor of that blood evidence. Finally, there were blood stains consistent with Vega's blood found on a sweatshirt which appears to have been owned by Garza and which was found by police in the apartment.

After Garza was arrested, he sent a letter to a friend which requested the friend and his wife tell police Vega was at their house the night she disappeared and after Vega left their house she never came back. He also told his friend he did not want to spend the rest of his life in prison and asked his friend to destroy the letter. The friend turned the letter over to police.

We find there was substantial evidence to support Garza's conviction of murder.

B. ***Kidnapping.*** Next, we examine the evidence concerning the kidnapping conviction. Garza concedes the evidence of sexual abuse was strong; however, Garza

argues there was not substantial evidence to support the kidnapping conviction. Garza asserts two arguments on appeal: 1) the confinement or removal involved in this case was merely incidental to the commission of sexual abuse, and 2) there was insufficient evidence to support the intent element of the sexual abuse alternative of kidnapping.

The confinement or removal necessary to sustain a conviction must be more than incidental to the commission of the underlying offense. *State v. Rich*, 305 N.W.2d 739, 745 (Iowa 1981); *State v. Ledezma*, 549 N.W.2d 307, 311 (Iowa App. 1996). In order for the confinement or removal to have independent significance, one of the three following criteria must be met. The confinement or removal must:

1) substantially increase the risk of harm to the victim;
2) significantly lessen the risk of detection; or
3) significantly facilitate escape following the completion of the offense.

Rich, 305 N.W.2d at 745. A broader interpretation of removal or confinement would produce unjust results since extremely disparate penalties may exist between the kidnapping charge and the underlying crime. *Id.*; *Ledezma*, 549 N.W.2d at 311.

Garza deceived C.H. into accompanying him. He drove her to a wooded area by the Cedar River in the roller dam area. Garza taped C.H.'s mouth shut when they exited the car after they arrived at the roller dam area. C.H. was sexually abused twice in different locations in the wooded area. We conclude the confinement or removal was more than incidental to the underlying crime of sexual abuse since Garza

significantly lessened the risk of detection and substantially increased the risk of harm to C.H.

Regarding the intent to commit sexual abuse element of the sexual abuse alternative of kidnapping, we note the element of intent is usually proven by circumstantial evidence and inferences drawn therefrom. *See State v. Olson*, 373 N.W.2d 135, 136 (Iowa 1985). The fact C.H. was sexually abused more than once during her confinement establishes Garza's specific intent. *See State v. Finnel*, 515 N.W.2d 41, 42-43 (Iowa 1994); *Olson*, 373 N.W.2d at 136-37.

We find there was substantial evidence to support Garza's conviction of kidnapping.

II. ***Severing the Criminal Charges.*** Garza contends the district court erred in failing to sever the murder charge from the other charges. Our standard of review is for an abuse of discretion. *State v. Thornton*, 506 N.W.2d 777, 779 (Iowa 1993). In order to show an abuse of discretion, one generally must show the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 326 A.2d 138, 140 (Vt. 1974)).

Joinder of charges against a defendant is permissible under Iowa Rule of Criminal Procedure 6(1) when the offenses are based on (1) "the same transaction or occurrence," or (2) "a common scheme or plan." Iowa R. Crim. P. 6(1). "The underlying theme of [rule 6(1)] is the achievement of judicial economy through the

joinder of related offenses." *State v. Lam*, 391 N.W.2d 245, 249 (Iowa 1986). Consequently, prosecutors have broad leeway in joining multiple offenses in one case. *Id.* In addition, the defendant has the burden to show "'his interest in receiving a fair trial uninfluenced by the prejudicial effects which could result from a joint trial outweighed the State's interest in judicial economy.'" *Id.* at 251 (quoting *State v. Trudo*, 253 N.W.2d 101, 104 (Iowa), *cert. denied*, 434 U.S. 903 (1977)). As will be discussed below, we find Garza's offenses are based on the same transaction or occurrence and Garza failed to show he was prejudiced as a result of the joinder.

Under the same transaction or occurrence test, joinder is appropriate when there is a unity of time, place, and circumstances which links the crimes, resulting in a situation where each crime can only be accurately explained by drawing upon the facts of the other crime. *State v. Bair*, 362 N.W.2d 509, 511-512 (Iowa 1985). In the case before us, a jury could have reasonably concluded the crimes took place on the same night; Vega's body was found in the same area as where the sexual abuse took place and where C.H. and Garza went fishing on the day the crimes took place; C.H. was one of the last people to see Vega alive; C.H. testified the last time she saw her mother she was with Garza; C.H. testified that after Garza returned home without Vega, Garza then took her to the roller dam area where he sexually abused her; and C.H. testified that when she and Garza were driving to the roller dam area and C.H. asked Garza why they were not headed in the direction of the family friend's house, Garza stated he had dropped Vega off on the road and they were going to pick her up.

Although much of the proof of the two crimes could have been presented independant of each other, there is a coupling of evidence not only of time, place and circumstances, but also of identity. Garza's relationship to both Vega and C.H. is significant as well as Vega and C.H.'s relationship to each other. We find joinder of the crimes was appropriate since there was a unity of time, place, and circumstances linking the crimes and the parties. We also find Garza did not suffer prejudice as a result of the joinder of the crimes in light of the overwhelming evidence presented by the State which provided the jury with substantial evidence to find Garza guilty of the crimes charged.

We find the district court did not abuse its discretion in failing to sever the murder charge from the other charges.

AFFIRMED.